

105 FERC ¶ 61,330  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

December 22, 2003

In Reply Refer To:  
Algonquin Gas Transmission Company  
Docket Nos. RP00-533-006 and RP00-533-008

Algonquin Gas Transmission Company  
5400 Westheimer Court  
Houston, Texas 77056

Attention: Richard J. Kruse  
Senior Vice President, Industry Initiatives, Pricing and Regulatory Affairs

Reference: See Appendix for List of Tariff Sheets

Dear Mr. Kruse:

1. On March 14, 2003, in Docket No. RP00-533-006, Algonquin Gas Transmission Company (Algonquin) submitted the referenced tariff sheets in compliance with the Commission order issued on March 4, 2003. On April 7, 2003, in Docket No. RP00-533-008, Algonquin filed a supplemental tariff sheet in response to a protest filed by Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (jointly, ConEd). The Commission accepts all but one of the tariff sheets in Docket No. RP00-533-006 effective March 4, 2003, subject to conditions as detailed below. Substitute First Revised Sheet No. 634 is rejected as moot. Second Substitute First Revised Sheet No. 634, filed in Docket No. RP00-533-008, is accepted effective March 4, 2003, subject to conditions as detailed below.

**Details of the Filing in Docket No. RP00-533-006**

2. Algonquin states that, in compliance with the March 4 Order, it has made the following modifications:

- Algonquin has eliminated its proposed change deleting the five year term matching cap for ROFR (Right of First Refusal) Agreements from Section 9.2(f) of the General Terms and Conditions (GT&C).
- GT&C Sections 1.40 and 9.2(g) have been revised to delete the reference to “uniform service levels” so that the eligibility requirement for a “ROFR Agreement” conforms to Section 284.221(d)(2)(ii), 18 C.F.R. (2003), of the Commission’s regulations.

- Provisions describing the conclusion of the ROFR process that had been included in GT&C Section 9.2(a) have been moved to a new GT&C Section 9.2(h) to reflect that the customer's ROFR rights include more than just the right to match bids; the customer may also negotiate with the pipeline to retain its capacity. In compliance with the March 4 order, Algonquin states that the new GT&C Section 9.2(h) reflects that, if a customer does not retain its capacity under the ROFR process at the maximum rate, the customer will no longer have a regulatory right of first refusal with respect to that capacity as of the conclusion of the ROFR process.
- GT&C Section 9.2(a) has been modified to make it clear that a customer may choose to reduce a portion of its capacity while retaining the remainder, and that the customer has a ROFR for the retained portion.
- GT&C Section 9.2(c) has been revised to provide that Algonquin will notify the shipper of the best bids that it must match within three business days of the close of the bidding period.
- Article I in the Forms of Service Agreement has been revised to clarify that Algonquin is providing both the required opportunity to reduce volumetric quantities when a ROFR contract is terminated or expires, and a new, additional ability to terminate only a portion of a ROFR contract on its anniversary dates and have only that portion subject to ROFR bidding procedures.
- Article I, Section 1 of the Forms of Service agreement has been revised to correct a typographical error, stating "maintaining the existing Maximum Daily Transportation Quantity" instead of "maintaining the existing Maximum Annual Transportation Quantity."
- Article II of the Forms of Service Agreement has been revised to provide that a ROFR will also arise when a ROFR agreement expires on its own terms.

3. Finally, Algonquin notes the March 4 Order requested Algonquin to explain the references in Section 1.40 of the ROFR Agreement definition to a future capacity commitment or a reservation of capacity by Algonquin. In response, Algonquin states that because its currently effective tariff does not include a provision specifying procedures for it to reserve capacity for future use, it has removed the proposed provision without prejudice to Algonquin making a future tariff filing to incorporate such provisions.

### **Public Notice, Interventions and Protests**

4. Public notice of the filing in Docket No. RP00-533-006 was issued on March 18, 2003, with interventions and protests due on or before March 26, 2003. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2003)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. ConEd filed a protest to the filing in Docket No. RP00-533-006, the details of which are discussed below.

5. ConEd states that Algonquin's March 14 filing requires the shipper to match both the rate and the term included in the best bid just to retain its capacity, and that if the shipper also wants to retain its ROFR, it also would be required to offer maximum rates for the full term offered by the best bid. ConEd protests that the March 14 filing contains no justification for this result, nor does it suggest any reason for Algonquin for having ignored its commitment to utilize an NPV analysis to determine whether a best bid has been matched. ConEd requests the Commission to require Algonquin to use an NPV analysis to determine whether a best bid has been matched.

#### **Details of the Filing in Docket No. RP00-533-008**

6. On April 7, 2003, Algonquin made a filing in Docket No. RP00-533-008 in response to ConEd's protest. Public notice of the filing in Docket No. RP00-533-008 was issued on April 10, 2003, with interventions and protests due on or before April 21, 2003. No interventions or protests were filed.

7. Algonquin asserts that it stands by its commitment to utilize the NPV approach in its ROFR bidding process. To address ConEd's concern, Algonquin states it is modifying its tariff provisions in proposed Section 9.2(f) to clarify that Algonquin applies the NPV methodology to both its evaluation of third party bids and the existing shipper's matching of that bid.

#### **Discussion**

8. The Commission finds that Algonquin's proposed tariff revisions generally comply with the previous orders in this proceeding, and with the Commission policies governing ROFR. Further, the Commission finds that Algonquin's proposed tariff revision in Docket No. RP00-533-008 satisfactorily addresses the concerns raised by ConEd, since existing shippers will be able to match the third party bid by bidding any combination of rate and term which produces the same NPV as the third party bid.

9. In Paragraph 28 of the March 4 Order, the Commission required Algonquin to revise Section 9.2(a) which enumerates the circumstances under which a customer may retain its capacity pursuant to a ROFR. That section included partial reductions of service levels pursuant to contractual right. However, a customer could also partially reduce its service level pursuant to a ROFR and retain the reduced capacity through the ROFR process. The Commission stated a shipper may choose to reduce a portion of its volumetric capacity and retain a portion and that the shipper has a ROFR for the portion of its capacity that it seeks to retain. The Commission required Algonquin to include in Section 9.2(a) the circumstance in which a partial reduction of service level is the result of a reduction of service level pursuant to a ROFR.

10. Algonquin has revised Paragraph 9.2(a) by adding "partial reduction" pursuant to this Section 9" to its list of circumstances under which a customer may retain its capacity through the ROFR process. Section 9 of Algonquin's tariff, which is entitled Pregranted

Abandonment and Right of First Refusal, contains its ROFR process. This change complies with the March 4 Order and is acceptable. In addition, Algonquin must make several changes to conform to the revision in Section 9.2(a) and to changes the Commission has previously required, such as including ROFR rights where contracts expire of their own terms. Algonquin must revise Section 9.1 to include partial reductions that result from the reduction of service level pursuant to a ROFR. Algonquin must also revise the first sentence in Section 9.2(f) so that it includes capacity made available by expiration of the contract term or by partial reduction pursuant to contractual right or from the reduction of service level pursuant to a ROFR. Finally, Algonquin must revise the second paragraph of Article I, Section 1.1 of its service agreements to read “upon termination or expiration of this service agreement . . .” Algonquin must file these revisions within 30 days of the date of this order.

11. Accordingly, the Commission accepts all but one of the tariff sheets in Docket No. RP00-533-006 effective March 4, 2003, subject to the conditions discussed above. Substitute First Revised Sheet No. 634 is rejected as moot. Second Substitute First Revised Sheet No. 634, filed in Docket No. RP00-533-008, is accepted effective March 4, 2003, subject to the conditions discussed above.

By direction of the Commission.

Linda Mitry,  
Acting Secretary.

cc: David McCallum, Director, Rates and Tariffs  
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**APPENDIX**

**Algonquin Gas Transmission Company  
FERC Gas Tariff, Fourth Revised Volume No. 1**

**Docket No. RP00-533-006**

**Accepted subject to conditions, effective March 4, 2003:**

Sub Original Sheet No. 606  
Sub Second Revised Sheet No. 632  
Sub Fourth Revised Sheet No. 633  
Sub Fourth Revised Sheet No. 800  
Sub Second Revised Sheet No. 801  
Sub Fourth Revised Sheet No. 810  
Sub Second Revised Sheet No. 811  
Sub Fourth Revised Sheet No. 820  
Sub Second Revised Sheet No. 821  
Sub Fourth Revised Sheet No. 830  
Sub Second Revised Sheet No. 831  
Sub Second Revised Sheet No. 841  
Sub Second Revised Sheet No. 900  
Sub First Revised Sheet No. 901  
Sub Tenth Revised Sheet No. 940  
Sub Second Revised Sheet No. 941

**Rejected as moot:**

Sub First Revised Sheet No. 634

**Docket No. RP00-533-008**

**Accepted subject to conditions, effective March 4, 2003:**

Second Sub First Revised Sheet No. 634